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Manfred Breunig

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EXAMINER

BASICHAS, ALFRED

ART UNIT

PAPER NUMBER

3743

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PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/579,017	<b>Applicant(s)</b> BREUNIG ET AL.	
	<b>Examiner</b> Alfred Basichas	<b>Art Unit</b> 3743	

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 30 December 2009.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-35 is/are pending in the application.
- 4a) Of the above claim(s) 1-7 and 27-31 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 8-26 and 32-35 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All    b) ☐ Some \*    c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)            | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftperson's Patent Drawing Review (PTO-948)    | Paper No(s)/Mail Date. _____                                      |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>5/11/06, 7/14/06</u> .  | 6) <input type="checkbox"/> Other: _____                          |

## **DETAILED ACTION**

### ***Election/Restrictions***

1. Applicant's election with traverse of Group II – claims 8-26 and 32-35 is acknowledged. The traversal is on the grounds that the Office Action fails to set forth adequate explanation, that the two groups relate to a single general inventive concept because both sets of claims have corresponding components, and that the search and examination of the two inventions would not be a serious burden. This is not found persuasive.

a. Applicant asserts that the Office Action fails to set forth adequate explanation. Nevertheless, the Office Action clearly, if succinctly, recites that the two inventions are patentably distinct. The examiner felt and feels that no further explanation is required as the scopes of the two claimed inventions are sufficiently distinct to be evident without further detail.

b. Applicant further asserts that the two groups relate to a single general inventive concept because both sets of claims have corresponding components. The fact that the two groups have corresponding components is not the issue, but rather the distinct differences.

c. Applicant further asserts that search and examination of the two inventions would not constitute a serious burden. The examiner disagrees.

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The requirement is still deemed proper and is therefore made FINAL.

***Claim Rejections - 35 USC § 112***

2. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

3. Claims 14-25, and 35 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the enablement requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention. The claims recite components that are not even mentioned in the detailed description of the invention (i.e., boiler, second, third, fourth,.....eighteenth, etc.). There is simply insufficient disclosure to comply with the enablement requirement.

***Claim Rejections - 35 USC § 102***

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 8-15, 18-20, 23-26, 33, and 35, as understood, are rejected under 35 U.S.C. 102(b) as being anticipated by Kohlstrung (6,410,890), which shows all of the claimed limitations. For example,

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8. A cooking device comprising: an inner casing having a cooking chamber 1 with at least one fluid inlet 12 and at least one fluid outlet 18; a ventilation device 2 having at least one fan 4 in the inner casing, at least one drive shaft (see at least fig. 1) for the fan, and at least one motor 6 for the drive shaft, the ventilation device for the circulation of at least a part of at least one fluid at least in the inner casing (see at least fig. 1); at least one reservoir 15 for the at least intermittent accommodation of at least the fluid 20 with at least one fluid inlet and at least one fluid outlet (see at least fig. 1); a filling- and/or charge-amount-monitoring device 16 for the reservoir; and a control or regulation device 14 cooperating with at least one of the ventilation device and the filling- and/or charge-amount-monitoring device, such that the filling- and/or charge-amount-monitoring device cooperates with the ventilation device for the determination of at least one parameter characteristic for the amount of fluid incident on the fan (see at least col. 4, lines 32-37).

9. The cooking device according to claim 8, wherein the motor cooperates with the control- or regulation device (see at least col. 4, lines 32-37).

10. The cooking device according to claim 8, further comprising: at least one pumping device 14 for circulating at least a part of the fluid at least in the inner casing.

11. The cooking device according to claim 8, wherein the characteristic parameter can be determined by evaluation of at least one of a rotation speed, a rotation speed fluctuation, a power consumption, a power consumption fluctuation, a current consumption and a current consumption fluctuation (see at least col. 4, lines 32-37).

12. The cooking device according to claim 10 wherein in the determination of the characteristic parameter, a pulsing of the pumping device can be taken into consideration (see at least col. 4, lines 32-37).

13. The cooking device according to claim 8, wherein the fluid includes at least one of water in the liquid form (see at least fig. 1), water in the vapor form, and a washing liquor.

14. The cooking device according to claim 8, wherein the reservoir is provided

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in one of the inner casing (inherent), a quenching chamber (see at least fig. 1 - conduit leading from the drain to the valve) and a boiler of a steam generator.

15. The cooking device according to claim 14, wherein the inner casing can be filled through at least one of a first fluid inlet cooperating with the quenching chamber (via valve 16), a second fluid inlet cooperating with the boiler and a third fluid inlet cooperating with a water line.

18. The cooking device according to claim 15, wherein at least one of the first fluid inlet is cooperating with at least one of a first shut-off device and/or pumping device 14, the second fluid inlet is cooperating with a second shut-off device and/or pumping device, the third fluid inlet is cooperating with a third shut-off device and/or pumping device, the fourth fluid inlet is cooperating with a fourth shut-off device and/or pumping device, the fifth fluid inlet is cooperating with a fifth shut-off device and/or pumping device, the sixth fluid inlet is cooperating with a sixth shut-off device and/or pumping device, the seventh fluid inlet is cooperating with a seventh shut-off device and/or pumping device, the eighth fluid inlet is cooperating with an eighth shut-off device and/or pumping device, and the ninth fluid inlet is cooperating with a ninth shut-off device and/or pumping device.

19. The cooking device according to claim 14, wherein the inner casing can be emptied through at least one of a first fluid outlet cooperating with the quenching chamber (see at least fig. 1), a second fluid outlet cooperating with the boiler and a third fluid outlet cooperating with a water discharge.

20. The cooking device according to claim 14, wherein the quenching chamber can be emptied through at least one of a fourth fluid outlet cooperating with the inner casing, a fifth fluid outlet cooperating with the boiler and a sixth fluid outlet cooperating with a water discharge 17.

23. The cooking device according to claim 18, wherein at least one of the first, second, third, fourth, fifth, sixth, seventh, eighth, ninth, tenth, eleventh, twelfth, thirteenth, fourteenth, fifteenth, sixteenth, seventeenth and eighteenth shut-off device

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and/or pumping device include least one valve (inherent that the pumping device have some form of flow control/valving).

24. The cooking device according to claim 18, wherein at least one of the first, second, third, fourth, fifth, sixth, seventh, eighth, ninth, tenth, eleventh, twelfth, thirteenth, fourteenth, fifteenth, sixteenth, seventeenth and eighteenth shut-off device and/or pumping device can be actuated through the control- or regulation device, especially always as a function of a comparison of the actual value of the characteristic parameter with at least one target value for the characteristic parameter (inherent).

25. The cooking device according to claim 24, wherein the pulse ratio of at least one of the first, second, third, fourth, fifth, sixth, seventh, eighth, ninth, tenth, eleventh, twelfth, thirteenth, fourteenth, fifteenth, sixteenth, seventeenth and eighteenth shut-off device and/or pumping device can be adjusted, especially controlled or regulated through the control- or regulation device (inherent).

26. The cooking device according to claim 8, wherein the filling- and/or charge-amount-monitoring device includes the ventilation device 17.

33. The cooking device according to claim 10, wherein the pumping device cooperates with the control- or regulation device to adjust at least one of a pump output and a pulsing of the pumping device (see at least col. 4, lines 32-37).

35. The cooking device according to claim 26, wherein the control- or regulation device at least partly, whereby the filling and/or charge-amount-monitoring device, also includes at least one of the first, second, third, fourth, fifth, sixth, seventh, eighth, ninth, tenth, eleventh, twelfth, thirteenth, fourteenth, fifteenth, sixteenth, seventeenth and eighteenth shut-off device and/or pumping device (see at least previous claims).

***Claim Rejections - 35 USC § 103***

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2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

4. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

5. Claim 32 is rejected under 35 U.S.C. 103(a) as being unpatentable over Kohlstrung (6,410,890), which discloses substantially all of the claimed limitations. Nevertheless, Kohlstrung fails to specifically recite,



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32. The cooking device according to claim 9, wherein the motor is an electrically commutated motor.

Official Notice is given that the use of electrically commutated motors with impellers is old and well known in the art. Such an arrangement has the clear and obvious benefit of providing for manufacturing considerations such as availability and cost. Accordingly, it would have been obvious to one of ordinary skill in the art at the time of the invention to incorporate the claimed motor into the invention disclosed by Kohlstrung, so as to provide for availability and cost.

6. Claims 8-26 and 32-35 are rejected under 35 U.S.C. 103(a) as obvious over Martin (US2003/145847) and Miele (DE2555052) as applied in applicant's international application no. PCT/DE2004/02449.

### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Alfred Basichas whose telephone number is 571 272 4871. The examiner can normally be reached on Monday through Friday during regular business hours.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Tech Center telephone number is 571 272 3700.

March 10, 2010

/Alfred Basichas/  
Primary Examiner, Art Unit 3743